

**STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD**



INTERNATIONAL UNION OF OPERATING
ENGINEERS,

Charging Party,

v.

STATE OF CALIFORNIA (STATE PERSONNEL
BOARD),

Respondent.

STATE OF CALIFORNIA (DEPARTMENT OF
PERSONNEL ADMINISTRATION),

Interested Party.

Case No. SA-CE-1295-S

Administrative Appeal

PERB Order No. Ad-343-S

December 21, 2004

Appearances: Weinberg, Roger & Rosenfeld by Matthew J. Gauger, Attorney, for International Union of Operating Engineers; Dorothy Bacskai Egel, Senior Staff Counsel, for State of California (State Personnel Board); Linda D. Buzzini, Labor Relations Counsel, for State of California (Department of Personnel Administration).

Before Duncan, Chairman; Whitehead and Neima, Members.

DECISION

WHITEHEAD, Member: This case is before the Public Employment Relations Board (PERB or Board) on a motion by the State of California (Department of Personnel Administration) (DPA) and the International Union of Operating Engineers (IUOE) to reject exceptions to an administrative law judge's (ALJ) proposed decision filed by the State of California (State Personnel Board) (SPB) on the basis that the exceptions were not timely filed.

DPA and IUOE's Motion

DPA first filed its motion with the Board on February 3, 2004.¹ It alleges that the ALJ's proposed decision in Case No. SA-CE-1295-S was served on the parties on

¹On February 3, 2004, IUOE joined in DPA's motion.

December 5, 2003. Adding one day for a holiday, DPA asserts that the exceptions had to have been postmarked on or before December 26, 2003. On December 9, 2003, SPB asked IUOE and DPA for an extension of time to file exceptions until February 12, 2004 but they declined consent. On December 11, 2003, SPB wrote to the Board appeals office to request an extension of time until February 12, 2004. By letter dated December 11, 2003, IUOE asked the Board to deny the extension. By letter dated December 16, 2003, IUOE made the same plea to specified Board staff. In both letters, IUOE argued that there was no good cause to grant the extension and that an extension would prejudice IUOE. On December 16, the Board granted SPB's request for an extension but only to Thursday, January 15, 2004.

SPB's statement of exceptions was signed by SPB's attorney and served by U.S. mail on January 20, 2004, five days late. SPB did not seek leave to file late exceptions but merely served its exceptions January 20 without comment on the fact that it was five days late.

According to DPA, SPB has not shown good cause for its late filing under PERB Regulation 32136.² Previously the Board has rejected late filings due to attorney illness and computer problems. (State of California (State Teachers Retirement System) (1999) PERB Order No. Ad-296-S.) This is not the type of case in which the Board has found good cause to accept a late filing, i.e. for clerical error, for something that occurred beyond the SPB's control, or where an attorney filed a declaration that she completed the statement of exceptions on time. (North Monterey County Unified School District (1996) PERB Order No. Ad-274; State of California (Department of Forestry and Fire Protection) (1998) PERB Order No. Ad-286-S; Mark Twain Union Elementary School District (2003) PERB Order No. Ad-319.) In this case, the SPB's attorney personally hand-dated the documents when she filed them on

²PERB regulations are codified at California Code of Regulations, title 8, section 31001, et seq.

January 20, 2004, five days after she was required to file and serve them. DPA thus asks that the Board reject SPB's filings as untimely and allow the ALJ's proposed decision to become final under PERB Regulation 32305.

SPB's Opposition to the Motion

SPB argues that it had an extra five days to file its exceptions beyond January 15, so that the new deadline was actually January 20, 2004. Under PERB Regulation 32130(c), a five day increment applies to filings made in response to documents served by mail within the State of California. Thus, the original deadline was actually December 30, 2003, and not December 25, with the five days added. Consequently, the January 15 deadline is extended to January 20. SPB does not state whether the Board letter granting the extension of time was served by mail. SPB obtained confirmation of the January 20 deadline from the Appeals Office by telephone on December 18, 2003. In addition, Monday, January 19 was a state and federal holiday. These facts are supported by an attached declaration submitted by SPB attorney Dorothy Bacskai Egel.

DISCUSSION

PERB Regulation 32130 provides:

- (a) In computing any period of time under these regulations, except under Section 32776(c), (d), (e) and (f), the period of time begins to run the day after the act or occurrence referred to.
- (b) Except for filings required during a 'window period' as defined in Section 33020, 40130, 51026, 61010, 71026, 81010 or 91010, whenever the last date to file a document falls on Saturday, Sunday, or a holiday, as defined in Government Code Sections 6700 and 6701, or PERB offices are closed, the time period for filing shall be extended to and include the next regular PERB business day. The extension of time provided herein shall be applied subsequent to the application of any other extension of time provided by these regulations or by other applicable law.
- (c) A five day extension of time shall apply to any filing made in response to documents served by mail if the place of address is

within the State of California, ten days if the place of address is outside the State of California but within the United States, and twenty days if the place of address is outside the United States. (Emphasis added.)

In this case, the record shows that the letter granting SPB an extension of time to file its exceptions was served by mail by the Board's Appeals Office on December 16, 2003. That letter extended the deadline for filing exceptions to January 15, 2004. Under Section 32130(c), an additional five-day extension would apply to extend the deadline to January 20, 2004. The SPB attorney received confirmation from the Appeals Office that January 20, 2004 was the appropriate date. The Board's practice has been to interpret Section 32130(c) to add the five-day extension to deadlines extended pursuant to PERB Regulation 32132. There are no Board cases on this issue and DPA and IUOE have cited no precedent to the contrary.

Consequently, the Board finds that SPB's exceptions were timely filed and so DPA's argument regarding good cause for acceptance of late filings is inapplicable.

Since PERB Regulation 32132 allows the Board to grant extensions of time for good cause, that determination was made when the Appeals Office granted the extension. As stated above, that document granting the extension incorporates the provisions of Section 32130 in providing an additional five-day extension for its service by mail.

PERB Regulation 32130 was originally based on the mailbox rule found in Cal. Code of Civil Procedure (CCP) 1013.³ Earlier versions of this regulation referred to this section.

³Code of Civil Procedure section 1013(a) provides:

In case of service by mail, the notice or other paper shall be deposited in a post office, mailbox, subpost office, substation, or mail chute, or other like facility regularly maintained by the United States Postal Service, in a sealed envelope, with postage paid, addressed to the person on whom it is to be served, at the office address as last given by that person on any document filed in the cause and served on the party making service by mail; otherwise at that party's place of residence. The service is complete at the time

CCP section 1013 has been liberally construed by the courts to grant the additional extension of time to respond to documents served by mail. Cases interpreting that provision in which section 1013 was deemed inapplicable involve situations in which private parties had granted an extension of time. (See e.g. Janetsky v. Avis (1986) 176 Cal.App.3d 799 [222 Cal.Rptr. 342]; White v. De Martini (1960) 183 Cal.App.2nd 665 [6 Cal.Rptr. 782].) We could find no cases applying this provision in which a court or administrative body had granted an extension of time for response.

The Board therefore denies DPA and IUOE's joint motion to reject SPB's exceptions to the ALJ's proposed decision.

ORDER

The motion by the State of California (Department of Personnel Administration) and the International Union of Operating Engineers to reject exceptions filed by the State of California (State Personnel Board) in Case No. SA-CE-1295-S is hereby DENIED.

Chairman Duncan joined in this Decision.

Member Neima's dissent begins on page 6.

of the deposit, but any period of notice and any right or duty to do any act or make any response within any period or on a date certain after the service of the document, which time period or date is prescribed by statute or rule of court, shall be extended five calendar days, upon service by mail, if the place of address and the place of mailing is within the State of California, 10 calendar days if either the place of mailing or the place of address is outside the State of California but within the United States, and 20 calendar days if either the place of mailing or the place of address is outside the United States, but the extension shall not apply to extend the time for filing notice of intention to move for new trial, notice of intention to move to vacate judgment pursuant to Section 663a, or notice of appeal. This extension applies in the absence of a specific exception provided for by this section or other statute or rule of court.
(Emphasis added.)

NEIMA, Member dissenting: As the letter to the State of California (State Personnel Board) extended the time to file exceptions to a specific date, I do not believe PERB Regulation 32130(c) applies. Accordingly, I respectfully dissent.